

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

GERARDO HERRERA-GONZALEZ,	)	No. CV-F-02-5709 OWW
	)	(No. CR-F-98-5183 OWW)
	)	
Petitioner,	)	ORDER DENYING PETITIONER'S
	)	MOTION FOR ORDER GRANTING
vs.	)	PERMISSION TO MODIFY GROUND
	)	FOUR AND TO FILE
	)	SUPPLEMENTAL POINTS AND
	)	AUTHORITIES (Doc. 225),
UNITED STATES OF AMERICA,	)	DIRECTING CLERK OF COURT TO
	)	CHANGE PETITIONER'S ADDRESS
	)	ON DOCKET AND SERVE
Respondent.	)	PETITIONER WITH DOCS. 220
	)	AND 221
	)	

On June 11, 2002, petitioner Gerardo Herrera-Gonzalez filed a timely Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255. Ground Four of the motion asserted that petitioner was denied the effective assistance of counsel because counsel "fail[ed] to object to the failure of the indictment to show all elements of the offense charged."

By Order filed on September 4, 2003, petitioner's motion for

1 relief with respect to Ground Four was denied. The United States  
2 was ordered to respond to the other grounds for relief asserted  
3 in the motion. (Doc. 208). By Order filed on June 15, 2004,  
4 petitioner's Section 2255 motion was denied and judgment for  
5 respondent was entered on June 16, 2004. Petitioner was served  
6 by mail with the June 15, 2004 Order and the June 16, 2004  
7 Judgment. However, service was returned with the notification  
8 "return to sender - gone" on June 28, 2004. Petitioner did not  
9 file a notice of change of address.

10 Service on petitioner was effective pursuant to Rule 83-  
11 182(f), Local Rules of Practice.<sup>1</sup>

12 On August 16, 2005, petitioner filed a "Motion for Order  
13 Granting Permission to Modify Ground Four, and To File  
14 Supplemental Memorandum of Points and Authorities." In this  
15 motion, petitioner asserts: "[P]etitioner was at the BOP facility  
16 in Lompoc, California when he filed his initial pleading.  
17 Petitioner is presently at FCI Safford, in Safford, Arizona,  
18 having been transferred here in April, 2004." Petitioner seeks

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19  
20 <sup>1</sup>Rule 83-182(f), Local Rules of Practice, provides in  
pertinent part:

21 Each ... party appearing in propria persona is  
22 under a continuing duty to notify the Clerk  
and all other parties of any change of address  
23 or telephone number ... of the party if  
appearing in propria persona. Absent such  
24 notice, service of documents at the prior  
address of the ... party shall be fully  
25 effective. Separate notice shall be filed  
with the Clerk and served on all parties in  
26 each action wherein an appearance has been  
made.

1 to amend Ground Four to read "United States v. Booker/Ameline III  
2 render Petitioner's Sentence Void, Ab Initio."

3 The relief requested in petitioner's motion is futile and  
4 does not change the conclusion in the September 4, 2003 Order.  
5 The Supreme Court's decision in *United States v. Booker*, 543 U.S.  
6 220 (2005), does not apply retroactively to cases on collateral  
7 review. *United States v. Cruz*, 423 F.3d 1119 (9<sup>th</sup> Cir.2005),  
8 *cert. denied*, \_\_\_ U.S. \_\_\_, 126 S.Ct. 1181 (2006). *United States*  
9 *v. Ameline*, 409 F.3d 1073 (9<sup>th</sup> Cir.2005), has no application to  
10 petitioner because *Ameline* is limited to cases on direct  
11 appellate review that were pending when *Booker* was decided.

12 ACCORDINGLY, as set forth above:

13 1. Petitioner's "Motion for Order Granting Permission to  
14 Modify Ground Four, and To File Supplemental Memorandum of Points  
15 and Authorities" is DENIED.

16 2. The Clerk of the Court is directed to enter petitioner's  
17 address on the docket:

18 Gerardo Herrera-Gonzalez  
19 #58363-097  
20 FCI Safford  
P.O. Box 9000  
Safford, AZ 85548

21 The Clerk of the Court is directed to serve Docs. 220 and 221 on  
22 petitioner at this address.

23 IT IS SO ORDERED.

24 **Dated: November 9, 2006**  
668554

**/s/ Oliver W. Wanger**  
UNITED STATES DISTRICT JUDGE